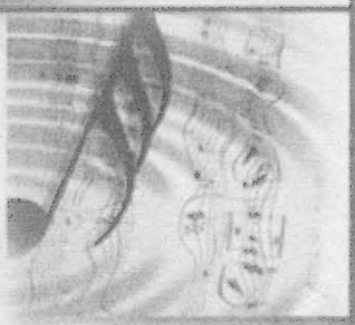

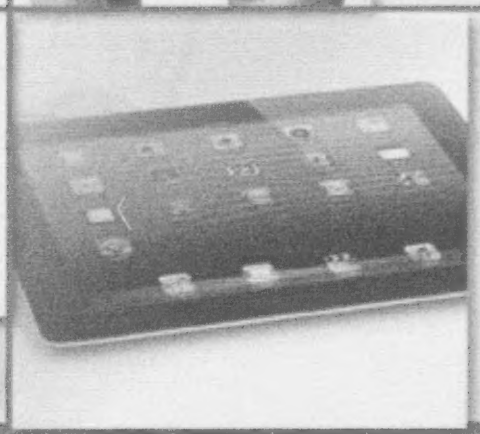

Annual Report
2013-14

Copyright Board of Canada

Copyright Board
Canada

CANADA

Commission du droit d'auteur
Canada

August 31, 2014

The Honourable James Moore, P.C., M.P.
Minister of Industry
Ottawa, Ontario
K1A 0A6

Dear Mr. Minister:

I have the honour of transmitting to you for tabling in Parliament, pursuant to section 66.9 of the *Copyright Act*, the twenty-sixth Annual Report of the Copyright Board of Canada for the financial year ending March 31, 2014.

Yours sincerely,

Claude Majeau

Claude Majeau
Vice-Chairman and
Chief Executive Officer

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Board Members and Staff

as of March 31, 2014

Chairman:	The Honourable William J. Vancise, Q.C.
Vice-Chairman and Chief Executive Officer:	Claude Majeau
Member:	J. Nelson Landry
Secretary General:	Gilles McDougall
Legal Counsel:	Sylvain Audet Valérie Demers
Counsel:	Marko Zatowkaniuk
Director, Analysis and Research:	Dr. Raphael Solomon
Economic Analyst:	Marjolaine Jarry
Acting Senior Clerk:	Maryse Choquette
Assistant Clerks:	Nadia Campanella Roch Levac
Registry Officers:	Sid J. Bateman Tina Lusignan
Manager, Corporate Services:	Nancy Laframboise
Financial and Administrative Assistant:	Denise Guénette
Technical Support Officer:	Michel Gauthier

Copyright Board of Canada

Chairman's Message

I am pleased to present the 2013-14 Annual Report of the Copyright Board of Canada. It documents the Board's activities during the year in relation to its mandate of setting fair and equitable royalties to both rights owners and users of copyright-protected works.

In 2013-14, the Board held two hearings dealing with the broadcasting of musical works and sound recordings by commercial radio stations and with the communication to the public and reproduction of musical works by online music services. These two hearings occupied a great deal of the Board's time.

In addition, the Board issued a total of seven final or interim decisions. Two of those decisions concerned the Tariff for video-copies of the Society for Reproduction Rights of Authors, Composers and Publishers in Canada Tariff (an interim tariff and a redetermination). One decision dealt with an interim tariff for Access Copyright authorizing copying in elementary and secondary schools. Another dealt with the Educational Rights Collective of Canada in which the Board varied the existing tariff by eliminating the final years of its tariff permitting the collective to wind up its operations. Another decision pertained to private copying and two decisions, one final and one interim, dealt with the retransmission of distant signals.

All of these decisions are summarized in this report together with Court decisions affecting decisions of the Board, and in particular those of the Federal Court of Appeal.

The Board also issued nine licenses pursuant to the provisions of the *Copyright Act*, which permit the use of published works when copyright owners cannot be located. In addition, Board staff assisted a number of individuals and organizations requesting a licence to locate the copyright owner thereby facilitating the use of published works.

I was invited to represent the Board at the 21st Annual Conference on Intellectual Property Law & Policy at Fordham University and had the pleasure of intervening during a discussion of the Canadian unlocatable provisions of the *Act* where I was able to describe the Board's efficient administration of those provisions.

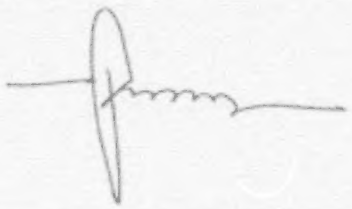
This is my last Annual Report as Chairman of the Copyright Board as my term ends in the coming fiscal year. I will have been Chairman for 10 years at a time when the Board was called upon to deal with and decide many ground breaking issues dealing with such matters as satellite radio, online music, and a host of other issues surrounding the use of music on the Internet. The Board was at the forefront on many, if not all of the issues, which were finally decided by the Supreme Court of Canada in July of 2012.

During my tenure, the workload of the Board has increased substantially, as evidenced by the value of all tariffs certified by the Board which is now well over $400 million, with no commensurate increase in funding. The processes leading to decisions have become more complex to manage as Board staff has been called upon to deal with an increasing number of requests to settle disputes over evidentiary matters. The Board has established a Working Committee on the Operations, Procedures and Processes of the Copyright Board, comprised of a number of experienced lawyers, whose mandate is to formulate proposals which will streamline processes and reduce the burden for the parties to participate in these processes. This however is not expected to reduce the Board's workload to any significant extent.

We as a Board strived to render decisions in a timely manner in a context of an ever-increasing number and complexity, both economic and legal, of the issues that come before it. This has become a challenge given the Board's lack of resources, recognized by many stakeholders, that has prevented us from hiring additional personnel to deal with the issues.

I underline that it is only with the assistance of the dedicated professional and support staff that we are able to cope with the demands made upon the Board and render as many decisions as we did within a reasonable time frame. The Board is fortunate to have such qualified and dedicated employees who truly bring meaning to the concept of public service. Their expertise and work ethic make the work of the Board possible.

Finally, I wish to thank the members of the Board, both past and present, for their support and professionalism, without which the work of the Board would have not been possible. In particular I must single out the dedication of Mr. Claude Majeau for the service and support rendered to me personally and to all Board members during his tenure, first as Secretary General and later as Vice-Chairman and Chief Executive Officer of the Board.



The Honourable William J. Vancise, Q.C.

Mandate of the Board

The Copyright Board of Canada (the "Board") was established on February 1, 1989, as the successor of the Copyright Appeal Board. The Board is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective society. Moreover, the Board has the right to supervise agreements between users and licensing bodies, issue licenses when the copyright owner cannot be located and may determine the compensation to be paid by a copyright owner to a user when there is a risk that the coming into force of a new copyright might adversely affect the latter.

The *Copyright Act* (the "*Act*") requires that the Board certify tariffs in the following fields: the public performance or communication of musical works and of sound recordings of musical works, the retransmission of distant television and radio signals, the reproduction of television and radio programs by educational institutions, and private copying. In other fields where rights are administered collectively, the Board can be asked by a collective society to set a tariff; if not, the Board can act as an arbitrator if the collective society and a user cannot agree on the terms and conditions of a license.

The responsibilities of the Board under the *Act* are to:

- certify tariffs for
  - the public performance or the communication to the public by telecommunication of musical works and sound recordings;
  - the doing of any protected act mentioned in sections 3, 15, 18 and 21 of the *Act*, such as the reproduction of musical works, of sound recordings, of performances and of literary works; and,
  - the retransmission of distant television and radio signals or the reproduction and public performance by educational institutions, of radio or television news or news commentary programs and all other programs, for educational or training purposes;
- set levies for the private copying of recorded musical works;
- set royalties payable by a user to a collective society, when there is disagreement on the royalties or on the related terms and conditions;
- rule on applications for non-exclusive licences to use published works, fixed performances, published sound recordings and fixed communication signals, when the copyright owner cannot be located;
- examine agreements made between a collective society and a user which have been filed with the Board by either party, where the Commissioner of Competition considers that the agreement is contrary to the public interest;
- receive such agreements with collective societies that are filed with it by any party to those agreements within 15 days of their conclusion;
- determine the compensation to be paid by a copyright owner to a person to stop her from performing formerly unprotected acts in countries that later join the *Berne Convention*, the *Universal Convention* or the *Agreement establishing the World Trade Organization*; and,
- conduct such studies with respect to the exercise of its powers as requested by the Minister of Industry.

Operating Environment

Historical Overview

Copyright collective societies were introduced to Canada in 1925 when PRS England set up a subsidiary called the Canadian Performing Rights Society (CPRS). In 1931, the *Act* was amended in several respects. The need to register copyright assignments was abolished. Instead, CPRS had to deposit a list of all works comprising its repertoire and file tariffs with the Minister. If the Minister thought the society was acting against the public interest, he could trigger an inquiry into the activities of CPRS. Following such an inquiry, Cabinet was authorized to set the fees the society would charge.

Inquiries were held in 1932 and 1935. The second inquiry recommended the establishment of a tribunal to review, on a continuing basis and before they were effective, public performance tariffs. In 1936, the *Act* was amended to create the Copyright Appeal Board.

On February 1, 1989, the Copyright Board of Canada took over from the Copyright Appeal Board. The regime for public performance of music was continued, with a few minor modifications. The new Board also assumed jurisdiction in two new areas: the collective administration of rights other than the performing rights of musical works and the licensing of uses of published works whose owners cannot be located. Later the same year, the *Canada-US Free Trade Implementation Act* vested the Board with the power to set and apportion royalties for the newly created compulsory licensing scheme for works retransmitted on distant radio and television signals.

Bill C-32 (*An Act to amend* the *Copyright Act*) which received Royal Assent on April 25, 1997, modified the mandate of the Board by adding the responsibilities for the adoption of tariffs for the public performance and communication to the public by telecommunication of sound recordings of musical works, for the benefit of the performers of these works and of the makers of the sound recordings ("the neighbouring rights"), for the adoption of tariffs for private copying of recorded musical works, for the benefit of the rights owners in the works, the recorded performances and the sound recordings ("the home-taping regime") and for the adoption of tariffs for off-air taping and use of radio and television programs for educational or training purposes ("the educational rights").

The *Copyright Modernization Act* (Bill C-11) received Royal Assent on June 29, 2012, and many of its provisions came into force on November 7, 2012. Though this legislation does not change the mandate of the Board or the way it operates, it provides for new rights and exceptions that will affect the Board's work.

The coming into force of new distribution and making available rights for authors, performers and makers of sound recordings, and the addition of education, parody and satire as allowable fair dealing purposes may affect existing and future tariffs or licences. New or modified exceptions dealing with non-commercial user-generated content, reproductions for private purposes, program copying for the purpose of time-shifting, backup copies, ephemeral copies by broadcasting undertakings and certain activities of educational institutions, among others, may affect some uses that are or may be subject to a Board tariff.

General Powers of the Board

The Board has powers of a substantive and procedural nature. Some powers are granted to the Board expressly in the *Act* and some are implicitly recognized by the courts.

As a rule, the Board holds hearings. No hearing will be held if proceeding in writing accommodates a small user that would otherwise incur large costs. The hearing may be dispensed with on certain preliminary or interim issues. No hearing has been held to date for a request to use a work whose owner cannot be located. Information is obtained either in writing or through telephone calls.

The examination process is always the same. Tariffs come into effect on January 1. On or before the preceding March 31, the collective society must file a statement of proposed royalties which the Board then publishes in the *Canada Gazette*. Users (or, in the case of private copying, any interested person) or their representatives may object to the statement within 60 days. The collective society and the objectors present oral and written arguments. After deliberation the Board certifies the tariff, publishes it in the *Canada Gazette*, and provides written reasons for its decision.

Guidelines and Principles Influencing the Board's Decisions

The decisions the Board makes are constrained in several respects. These constraints come from sources external to the Board: the law, regulations and judicial pronouncements. Others are self-imposed, in the form of guiding principles that can be found in the Board's decisions.

Court decisions also provide a large part of the framework within which the Board operates. Most decisions focus on issues of procedure, or apply the general principles of administrative decision-making to the specific circumstances of the Board. However, the courts have also set out several substantive principles for the Board to follow or that determine the ambit of the Board's mandate or discretion.

The Board also enjoys a fair amount of discretion, especially in areas of fact or policy. In making decisions, the Board itself has used various principles or concepts. Strictly speaking, these principles are not binding on the Board. They can be challenged by anyone at any time. Indeed, the Board would illegally fetter its discretion if it considered itself bound by its previous decisions. However, these principles do offer guidance to both the Board and those who appear before it. In fact, they are essential to ensuring a desirable amount of consistency in decision-making.

Among those factors, the following seem to be the most prevalent: the coherence between the various elements of the public performance of music tariffs; the practicality of the administration to avoid tariff structures that make it difficult to administer the tariff in a given market; the search for non-discriminatory practices; the relative use of protected works; the taking into account of the Canadian environment; the stability in the setting of tariffs that minimizes disruption to users; as well as the comparisons with "proxy" markets and comparisons with similar prices in foreign markets.

Copyright Board of Canada

Organization of the Board

Board members are appointed by the Governor in Council to hold office during good behaviour for a term not exceeding five years. They may be reappointed once.

The *Act* states that the Chairman must be a judge, either sitting or retired, of a superior, county or district court. The Chairman directs the work of the Board and apportions its caseload among the members.

The *Act* also designates the Vice-Chairman as Chief Executive Officer of the Board, exercising direction over the Board and supervision of its staff.

Chairman

The Honourable William J. Vancise, Q.C., a retired justice of the Court of Appeal for Saskatchewan, was appointed part-time Chairman of the Board in May 2004 and reappointed in 2009 for a five-year term. The Honourable William J. Vancise was appointed to the Court of Queen's Bench in 1982 and to the Court of Appeal for Saskatchewan in November 1983 where he served until he retired in January 2013. In 1996, he was appointed Deputy Judge of the Supreme Court of the Northwest Territories. He earned an LL.B. from the University of Saskatchewan in 1960 and was called to the Saskatchewan Bar in 1961. He joined Balfour and Balfour as an associate in 1961 and in 1963 he was named a partner at Balfour, McLeod, McDonald, Laschuk and Kyle, where he became the managing partner in 1972. The Honourable William J. Vancise received his Queen's Counsel designation in 1979.

Vice-Chairman & Chief Executive Officer

Claude Majeau was appointed as full-time Vice-Chairman and Chief Executive Officer in August 2009 for a five-year term. He occupied the position of Secretary General of the Copyright Board from 1993 until his appointment as Vice-Chairman. Before joining the Board, Mr. Majeau worked for the Department of Communications of Canada from 1987 to 1993 as Director (Communications and Culture) for the Quebec Region. From 1984 to 1987, he was Chief of Staff to the Deputy Minister of the same department. Before 1984, he occupied various positions dealing with communications and cultural industries and public policy. Mr. Majeau earned an LL.B. from the Université du Québec à Montréal in 1977 and has been a member of the Barreau du Québec since 1979.

Member

J. Nelson Landry was appointed in February 2010 as a part-time member for five years. Mr. Landry has served as a domain name arbitrator for the World Intellectual Property Organisation (WIPO) since 2001. From 2002 to 2005, he was an instructor for the Patent Agent Training Course – Infringement and Validity at the Intellectual Property Institute of Canada. In 2003, he gave a management of intellectual property course at the MBA level at the *Hautes Études Commerciales* of the *Université de Montréal* and from 1969 to 2002, Mr. Landry was a lawyer at Ogilvy Renault where he retired as senior partner in 2002. Mr. Landry obtained a BA in 1959 and a BSc in 1965 from the *Université de Montréal*. He also graduated with a B.C.L. from McGill University in 1968 and was called to the Quebec Bar in 1969.

*Note: Detailed information on the Board's resources, including financial statements, can be found in its Report on Plans and Priorities for 2013-14 (Part III of the Estimates) and the Performance Report for 2013-14. These documents are or will soon be available on the Board's Web site (**www.cb-cda.gc.ca**).*

Copyright Board of Canada

Collective Administration of Copyright

In Canada, the collective administration of copyright is supported by a number of collective societies. These collective societies are organizations that administer the rights of several copyright owners. They can grant permission to use their works and set the conditions for that use. Some collective societies are affiliated with foreign societies; this allows them to represent foreign copyright owners as well.

The Board regulates Canadian collective administration organizations through one of the following regulatory regimes.

Public Performance of Music

The provisions beginning with section 67 of the *Act* deal with the public performance of music or the communication of music to the public by telecommunication. Public performance of music means any musical work that is sung or performed in public, whether it be in a concert hall, a restaurant, a hockey stadium, a public plaza or other venue. Communication of music to the public by telecommunication means any transmission by radio, television (including cable and satellite) or the Internet. Collective societies collect royalties from users based on the tariffs certified by the Board.

Two collective societies operate under this regime:

- The Society of Composers, Authors and Music Publishers of Canada (SOCAN) administers the right to perform in public or to communicate to the public by telecommunication musical works;
- Re:Sound Music Licensing Company (Re:Sound) collects royalties for the equitable remuneration of performers and makers for the performance or communication of sound recordings of musical works.

General Regime

Sections 70.12 to 70.191 of the *Act* give collective societies that are not subject to a specific regime the option of filing a proposed tariff with the Board. The review and certification process for such tariffs is the same as under the specific regimes.

There are a number of collective societies operating under this regime, including the following:

- Access Copyright, The Canadian Copyright Licensing Agency (Access Copyright) represents writers, publishers and other creators for the reproduction rights of works published in books, magazines, journals and newspapers. It licenses uses in all provinces except Quebec;
- The *Société québécoise de gestion collective des droits de reproduction* (COPIBEC) represents similar rights owners as Access Copyright, but for uses in Quebec;
- ArtistI is the collective society founded by the *Union des artistes* (UDA) for the remuneration of performers' rights;
- ACTRA Recording Artists' Collecting Society ("ACTRA RACS"), a division of ACTRA Performers' Rights Society ("ACTRA PRS"), collects and distributes equitable remuneration for eligible recording artists;
- CONNECT Music Licensing (formerly known as Audio-Video Licensing Agency (AVLA)) (CONNECT) administers licences in Canada for the reproduction of sound recordings, and the reproduction and broadcast of music videos on behalf of all the major record companies, many independent labels, as well as artists and producers;

- The *Société de gestion collective des droits des producteurs de phonogrammes et vidéogrammes du Québec* (SOPROQ) administers similar rights as CONNECT. Its members are mostly Francophone independent record labels;
- The Canadian Broadcasters Rights Agency (CBRA) claims royalties for programming and excerpts of programming owned by commercial radio and television stations and networks in Canada;
- The Canadian Musical Reproduction Rights Agency (CMRRA) collects royalties on behalf of Canadian and U.S. publishers for the reproduction rights of musical works in Canada;
- *The Musicians' Rights Organization Canada* (MROC) collects royalties on behalf of musicians and vocalists for the public performance of their recorded works;
- The Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) administers royalties stemming from the reproduction of musical works. It represents members mostly from the province of Quebec; and,
- CMRRA/SODRAC Inc. (CSI), a joint venture of CMRRA and SODRAC, licenses the reproduction rights of songwriters and music publishers whose songs are active in the Canadian market place.

More details about other collective societies operating under this regime can be found on the Board's website at: ***http://www.cb-cda.gc.ca/societies-societes/index-e.html***

Retransmission of Distant Signals

Sections 71 to 76 of the *Act* provide for royalties to be paid by cable companies and other retransmitters for the retransmission of distant television and radio signals. The Board sets the royalties and allocates them among the collective societies representing copyright owners whose works are retransmitted.

There are currently nine collective societies receiving and distributing royalties under this regime:

- The Border Broadcasters Inc. (BBI) represents the U.S. border broadcasters;
- The Canadian Broadcasters Rights Agency Inc. (CBRA) represents commercial radio and television stations and networks in Canada;
- The Canadian Retransmission Collective (CRC) represents all PBS and TVOntario programming (producers) as well as owners of motion pictures and television drama and comedy programs produced outside the United States;
- The Canadian Retransmission Right Association (CRRA) represents the Canadian Broadcasting Corporation (CBC), the American Broadcasting Company (ABC), the National Broadcasting Company (NBC), the Columbia Broadcasting System (CBS) and *Télé-Québec*;
- The Copyright Collective of Canada (CCC) represents copyright owners (producers and distributors) of the U.S. independent motion picture and television production industry for all drama and comedy programming;

- The Direct Response Television Collective Inc. (DRTVC) claims royalties for all television programs and underlying works in the form of direct response television programming (defined as "infomercials");
- FWS Joint Sports Claimants Inc. (FWS) represents the National Hockey League, the National Basketball Association and the Canadian, National and American Football Leagues;
- The Major League Baseball Collective of Canada Inc. (MLB) claims royalties arising out of the retransmission of major league baseball games in Canada; and,
- SOCAN, representing owners of the copyright in the music that is integrated in the programming carried in retransmitted radio and television signals.

Educational Rights

Under sections 29.6, 29.7 and 29.9 of the *Act*, educational institutions can copy and perform news and news commentaries and keep and perform the copy for one year without having to pay royalties; after that, they must pay the royalties and comply with the conditions set by the Copyright Board in a tariff, pursuant to sections 71 to 76 of the *Act*.

The Educational Rights Collective of Canada (ERCC) represents the interests of copyright owners of television and radio programs (news, commentary programs and all other programs), when these programs are reproduced and performed in public by educational institutions for educational or training purposes.

Private Copying

The private copying regime, as set in sections 79 to 88 of the *Act*, entitles an individual to make copies (a "private copy") of sound recordings of musical works for that person's personal use. In return, those who make or import recording media ordinarily used to make private copies are required to pay a levy on each such medium. The Board sets the levy and designates a single collecting body to which all royalties are paid.

The Canadian Private Copying Collective (CPCC) is the collective society for the private copying levy, collecting royalties for the benefit of eligible authors, performers and producers. The member collectives of the CPCC are CMRRA, Re:Sound, SODRAC and SOCAN.

Arbitration Proceedings

Pursuant to section 70.2 of the *Act*, when a collective society and a user are unable to agree on the terms of the license and on application filed by either one of them, the Board can set the royalties and the related terms and conditions of a license for the use of the repertoire of a collective society to which section 70.1 applies.

Tariffs Proposed by Collective Societies

In March 2014, the following collective societies filed their proposed statements of royalties to be collected in 2015 and beyond:

Access Copyright

- Proposed tariff for the reprographic reproduction of works by employees of provincial and territorial governments, 2015-2018.

Artisti

- Proposed tariff for the reproduction of performers' performances made by CBC in connection with its over-the-air radio broadcasting, its simulcasting and its webcasting activities, 2015-2017.
- Proposed tariff for the reproduction of performers' performances by commercial radio stations, 2015-2017.

COPIBEC

- Proposed tariff for the reproduction and authorization to reproduce works by universities and persons acting under their authority, 2015-2019.

CMRRA

- Proposed tariff for the reproduction of musical works embodied in music videos by online music services, 2015 (Tariff 4).
- Proposed tariff for the reproduction of musical works by commercial television stations, 2015 (Tariff 5).

CSI

- Proposed tariff for the reproduction of musical works by commercial radio stations, 2015.
- Proposed tariff for the reproduction of musical works by non-commercial radio stations, 2015.
- Proposed tariff for the reproduction of musical works by online music services in 2015.

SOCAN

- Proposed tariffs for the public performance or the communication to the public by telecommunication of musical or dramatico-musical works, 2015:
  - Tariff 1.A – Commercial Radio
  - Tariff 1.B – Non-Commercial Radio
  - Tariff 1.C – CBC Radio
  - Tariff 2 – Television
  - Tariff 6 – Motion Pictures Theatres
  - Tariff 9 – Sports Events
  - Tariff 15 – Background Music in Establishments not Covered by Tariff no. 16
  - Tariff 16 – Background Music Suppliers
  - Tariff 17 – Transmission of Pay, Specialty and Other Television Services by Distribution Undertakings
  - Tariff 22 – Internet
  - Tariff 24 – Ringtones and Ringbacks
  - Tariff 25 – Satellite Radio Services
  - Tariff for Pay Audio Services
- Proposed tariffs for the public performance or the communication to the public by telecommunication of musical or dramatico-musical works, 2015-2017:
  - Tariff 3 – Cabarets, Cafes, Clubs, Cocktail bars, Dining Rooms, Lounge, Restaurants, Road Houses, Taverns and Similar Establishments

- Tariff 4 – Live Performances at Concert Halls, Theatres and Other Places of Entertainment
- Tariff 5 – Exhibitions and Fairs
- Tariff 7 – Skating Rinks
- Tariff 8 – Receptions, Conventions, Assemblies and Fashion Shows
- Tariff 10 – Parks, Parades, Streets and Other Public Areas
- Tariff 11 – Circuses, Ice Shows, Fireworks Displays, Sound and Light Shows and Similar Events; Comedy Shows and Magic Shows
- Tariff 12 – Theme Parks, Ontario Place Corporation and Similar Operations; Paramount Canada's Wonderland and Similar Operations
- Tariff 13 – Public Conveyances
- Tariff 14 – Performance of Individual Work
- Tariff 18 – Recorded Music for Dancing
- Tariff 19 – Fitness Activities and Dance Instruction
- Tariff 20 – Karaoke Bars and Similar Establishments
- Tariff 21 – Recreational Facilities Operated by a Municipality, School, College, University, Agricultural Society or Similar Community Organizations
- Tariff 23 – Hotel and Motel In-Rooms Services

SODRAC

- Proposed tariff for the reproduction of musical works embedded into cinematographic works for the purpose of distribution of copies of the cinematographic works for private use or theatrical exhibition, 2015 (Tariff 5).
- Proposed tariff for the reproduction of musical works embedded in musical audiovisual works for their transmission by a service, 2015 (Tariff 6).
- Proposed tariff for the reproduction of musical works embedded in audiovisual works for their transmission by a service, 2015 (Tariff 7).

Re:Sound

- Proposed tariff for the communication to the public by telecommunication and the performance in public of published sound recordings embodying musical works and performers' performances of such works by commercial radio stations, 2015-2017 (Tariff 1.A).
- Proposed tariff for the communication to the public by telecommunication of published sound recordings embodying musical works and performers' performances of such works by multi-channel subscription satellite radio services, 2015-2018 (Tariff 4).
- Proposed tariff for the communication to the public by telecommunication of published sound recordings embodying musical works and performers' performances of such works in respect of simulcasting, non-interactive webcasting and semi-interactive webcasting, 2015 (Tariff 8).

CPCC

In November 2013, the Canadian Private Copying Collective (CPCC) filed its statement of proposed levies as follows:

- Proposed statement of levies to be collected on the sale, in Canada, of blank audio recording media for the years 2015 and 2016.

Requests for Arbitration

The Board did not receive any request for arbitration in the year 2013-14.

On March 19, 2009, the Board received a request for arbitration between SODRAC and the *Association québécoise de l'industrie du disque, du spectacle et de la vidéo* (ADISQ). On May 23, 2013, SODRAC informed the Board that the parties had reached an agreement. Pursuant to subsection 70.3(1) of the *Act*, the Board shall not proceed with an application when a notice is filed with the Board that an agreement has been reached.

Copyright Board of Canada

Hearings

During the fiscal year, the Board held two hearings. The first concerned the rights used to operate a commercial radio station. It involved the communication to the public by telecommunication of and the reproduction of musical works, performer's performances and sound recordings. This hearing took place in October 2013 and March 2014. Participating in the hearing were five collective societies (SOCAN, Re:Sound, CSI, AVLA/SOPROQ and ArtistI) as well as the Canadian Association of Broadcasters.

The second hearing concerned the communication to the public by telecommunication and the reproduction of musical works by online music services. This hearing took place in November 2013 and May 2014. The parties participating in the hearing were SOCAN, Re:Sound, SODRAC, Apple Canada Inc. and Apple Inc., the Canadian Association of Broadcasters, Bell Canada, Rogers Communications, Quebecor Media Inc., TELUS, Videotron G.P., and Pandora Media Inc.

Decisions

During the fiscal year 2013-14, the following seven decisions in respect of the indicated collective society and tariff were rendered:

Access Copyright

May 29, 2013 – Access Copyright Tariff for educational institutions, 2010-2015 [Interim Decision]

On July 12, 2012, the Supreme Court of Canada overturned the Board's decision in respect of Access Copyright's Tariff for educational institutions for the years 2005 to 2009 and remitted the matter to the Board for redetermination. The Board redetermined this Tariff and on January 18, 2013, a new tariff for 2005-2009 was certified. By virtue of section 70.18 of the *Act*, this certified tariff continued to apply to the period 2010-2015.

Early in December, 2012, counsel for the Objectors notified Access that they would stop paying royalties pursuant to the tariff as of January 1, 2013, as none would be operating under the tariff from that date. On April 8, 2013, pursuant to section 66.51 of the *Act*, Access applied for an interim tariff. On May 29, 2013, the Board granted the application in part.

The interim tariff would reduce the royalty rate from $4.81 per full-time equivalent student (FTE) to $4.66, as a result of a recent amendment to the *Act* dealing with examination reproductions. In all other respects, the interim tariff would remain the same as the certified tariff for 2005-2009.

Access advanced several arguments in favor of the interim tariff. The interim tariff would provide continuity and certainty for all parties. The issuance of the requested interim tariff would not adversely affect the Objectors. Those who do not require a licence from Access would not be required to pay anything. Those who do need a licence would be afforded a mechanism to secure it. As for those who need a licence but decide to do without, the interim tariff would provide Access with tariff enforcement remedies under the *Act*.

The Objectors opposed the application. They agree that the Board has the power to grant it, but argue that the principles the Board regularly invokes in deciding whether or not to grant such an application are not satisfied. The Objectors take issue with the interpretation Access offers of the *Act*. Since the certified tariff is continued on an interim basis, an interim tariff is not necessary for enforcement purposes.

The Board agreed with the Objectors that, but for the change in royalties payable, no interim tariff was necessary. However, given the change in royalty rates, an interim tariff was necessary. As a result, the Board certified an interim tariff.

CPCC

August 30, 2013 – Private copying, 2012-2014

In March, 2011, CPCC filed its proposed tariff for private copying for 2012 and 2013. In February, 2012, CPCC filed its proposed tariff for 2014; consideration of the latter tariff was subsequently merged with the former. The merged tariff had two components. First, CPCC proposed maintaining the private copying levy on CDs at $0.29. Second, CPCC proposed a new private copying levy on electronic memory cards (later restricted by CPCC to microSD cards only) ranging between $0.50 and $3.00, depending on the capacity of the memory card.

Numerous parties objected to the tariff or provided comments. Seven Objectors participated in the hearing: the Retail Council of Canada (RCC), Samsung Electronics Canada Inc. (Samsung), Panasonic Canada Inc. (Panasonic) and a Coalition comprised of LG Electronics Canada, Inc., Micron Technology Inc., SanDisk Corporation and Research in Motion Limited (the "Coalition").

On July 20, 2012, the Board split the hearing into two phases. In Phase I, the Board would hear all the evidence dealing with CDs and CPCC's evidence dealing with microSD cards. If Phase II was required, the Board would hear the Objectors' evidence dealing with microSD cards. The hearing for Phase I took place in October, 2012. The Board later determined that a hearing into Phase II was not necessary.

The Coalition, Panasonic and Samsung argued that microSD cards do not qualify as audio recording media, that the proposed rates are excessive and that the proposed reporting obligations are unduly burdensome and require the reporting of information unnecessary for the administration of the tariff. RCC raised similar grounds of objections. In addition, it challenged the constitutionality of Part VIII of the *Act*. It also argued that CDs no longer qualify for a levy by reason that they are no longer ordinarily used by consumers to copy music.

The Board found that CDs remain an audio recording medium: they are ordinarily used by consumers to copy music. The Board accepted the testimony of CPCC witnesses Stephen Stohn and Paul Audley, who concluded that in 2010-11: (a) 15 per cent (373.5 million) of the 2.29 billion music tracks copied onto any medium or device were copied onto blank CDs; (b) Canadian consumers purchased 33.4 million blank CDs, of which 14.3 million were used to copy music; and (c), 29 per cent of those who used CDs did so exclusively to copy music.

The Board did not however accept the valuation model of Messrs. Stohn and Audley, for several reasons. First, the model contained several assumptions that have not been updated or tested for several years. Second, the model implied some changes in consumer behavior (such as an important increase in the number of tracks copied onto a blank CD) that the witnesses are unable to adequately explain. Finally, the data used to calibrate the model have become unstable, as certain types of copying behavior are reaching the end of their life-cycle.

The Board rejected the contention by RCC that the current rate of $0.29 was too high relative to some foreign jurisdictions. In the end, the Board certified a rate of $0.29, continuing the rate which had first been set for 2008, using the following rationale. The current levy is a reality in the marketplace. Leaving it unchanged both provides rights holders with some compensation until none is payable any longer, while avoiding some of the perverse effects that a too rigid calculation based on actual consumption may have on the pricing of a good at the end of its life cycle.

On July 3, 2012, the Minister of Industry announced that he intended to introduce regulations exempting microSD cards from private copying levies. The *MicroSD Cards Exclusion Regulations (Copyright Act)* came into force on October 18, 2012 and were published in the *Canada Gazette* on November 7, 2012. These *Regulations* excluded microSD cards from the definition

of "audio recording medium" under section 79 of the *Act* from the date they came into force. As a result, microSD cards could not be subject to a private copying levy from that date, but only for the ten-month period from January, 2012 to the date that the Regulations came into force in October, 2012.

In its decision, the Board first found that microSD cards are a medium ordinarily used for the purpose of private copying. The Board next considered whether there are exceptional circumstances which prevent it from certifying a tariff for microSD cards.

Accordingly, the Board sent the following four questions to the parties after the Phase I hearing:

- Would it be intrinsically unfair to establish a tariff given that past experience has demonstrated that in the Private Copying Regime retroactive collection of royalties is either difficult or impossible?
- Would the costs of the establishment of the accounting and reporting structures for the parties for a period of less than ten months be disproportionate to the proposed or potential royalties?
- Would the cost of deciding the issue of whether microSD cards are audio recording media be disproportionate to the proposed or potential royalties? and,
- Would it be intrinsically unfair to establish a tariff for any other reason?

After considering the parties' responses to these questions, the Board found that exceptional circumstances do exist and declined to certify a tariff for the ten-month period, for the following reasons.

First, the ten-month period had passed and experience has shown that it is nearly impossible to collect private copying royalties retroactively. Second, the costs of setting up the reporting structures necessary to account for the levy, for a period of less than ten months, would be disproportionate to any proposed or potential royalties. Third, the legal, expert and other costs and disbursements that would be incurred if the Board proceeded with Phase II also would be disproportionate to the proposed or potential royalties and as such, inherently unfair. Fourth, requiring the Objectors to incur the expenses involved in proceeding with Phase II simply because CPCC expended resources on preparing for Phase I was neither justified nor rationally sound.

The Board maintained the existing apportionment among the various rights holders: authors are entitled to 58.2 per cent of royalties, performers to 23.8 per cent and makers to 18.0 per cent.

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ERCC

December 19, 2013 – Royalties to be collected by ERCC from Educational Institutions in Canada for the Reproduction and Performance of Works or Other Subject-Matters Communicated to the Public by Telecommunications for the Years 2012 to 2016 [Application to Vary]

On November 4, 2013, ERCC filed an application to vary the 2012-2016 tariff "by eliminating the years 2014, 2015 and 2016 from the current certified tariff with the result that the term of the Tariff will end on December 31, 2013."

An application to vary cannot succeed unless there is a material change in circumstances since the relevant decision was made. The material change ERCC relied on is as follows.

Royalties received by ERCC pursuant to its tariffs have always been modest. Costs have continued to exceed revenues, and debts have always largely exceeded any amount available to the collective. As a result, nothing has ever been distributed to rights holders. Recent amendments to the *Act* have made it increasingly unlikely that ERCC's costs would ever be covered by royalty receipts. Unable to sustain continued losses, ERCC's board of directors has recently voted to recommend to the members to dissolve ERCC.

The application to vary was granted for the reasons expressed by ERCC.

The Board noted that its decision to vary the tariff prejudices neither educational institutions, who will be entitled to make the relevant protected uses for free, nor rights holders, since there is not, and will never be, anything to distribute among them.

Multiple Collectives, Retransmission of Distant Signals

November 29, 2013 – Retransmission of Distant Television and Radio Signals, in Canada, for the Years 2009 to 2013

On March 31, 2008, BBI, CBRA, CRC, CRRA, CCC, DRTVC, FWS, MLB and SOCAN ("the Collectives") jointly filed a proposed tariff for the retransmission of distant television signals for the years 2009 to 2013. On March 31, 2008 and March 31, 2011, CBRA, CRRA and SOCAN filed a proposed tariff for the retransmission of distant radio signals for the years 2009 to 2011 and 2012 to 2013. The proposed tariffs were published in the *Canada Gazette*.

Bell ExpressVu, Canadian Cable Systems Alliance Inc., Cogeco Cable Inc., Eastlink, Rogers Communications Inc., Shaw Communications, TELUS Communications Company and Videotron Ltd. (the "Objectors") filed objections to all three tariffs.

Retransmission tariffs set the amount of royalties (or quantum) to be paid by retransmitters for the communication by telecommunication of the works embedded in the distant, over-the-air radio and television signals they retransmit to their customers. These tariffs also allocate royalties among the collectives entitled to share in them.

With respect to radio retransmission, the parties informed the Board on July 18, 2013, that they had agreed on both the amount of royalties and their allocation among the relevant collectives. The draft of the radio tariff filed with the agreement was identical to the *Radio Retransmission Tariff, 2004-2008*. The Board certified a radio tariff reflecting the parties' agreement.

With respect to the television retransmission tariff, both the quantum and allocation of the royalties remained at issue. A hearing into this matter was not scheduled immediately by reason that the parties were attempting to agree on the amount of royalties. On December 20, 2010, the parties agreed on rate increases to be phased in over the life of the tariff and the Objectors agreed to pay at the new rates without waiting for the Board to certify a tariff. At the request of CBRA and CRC, the Board approved the Collectives' joint proposal for a timetable leading to a hearing, starting on November 13, 2012, to deal with the allocation of royalties.

Four days before the hearing, the Collectives advised the Board that they had agreed on the allocation of royalties and requested that the hearing be adjourned. The Board granted their application.

On December 6, 2012, CBRA and CRC advised the Board that a few issues relating to the allocation of royalties remained; the most important being whether the sums to be reallocated among the Collectives for 2009 to 2012 should attract interest. CBRA and CRC also asked that the Board establish a process to deal with these issues expeditiously to ensure that retransmitters be required to pay at the new royalty rates and according to the agreed allocation as of January 1, 2013.

The Board informed the parties that it would be possible to ensure that retransmitters pay at the new rates and according to the agreed allocation as of January 1, 2013 through an interim decision if applied for. On December 14, 2012, CBRA and CRC filed an application asking the Board to approve the new rates and allocation, order the retransmitters to pay royalties according to these agreements as of January 1, 2013, and, initiate a process to deal with all remaining issues. FWS supported the application but CCC and CRRA opposed it, arguing that CBRA and CRC were trying to alter the allocation agreement by asking the Board to formalize the allocation but not the interest on the allocation adjustments. On December 21, 2012, the Board granted the application in part: the interim tariff required retransmitters to pay royalties according to the new rates and allocation as of January 1, 2013 but left open all other pending issues.

On February 28, 2013, CCC, CRRA, BBI and DRTVC asked the Board to set in motion a process leading to a final decision. The issues that needed to be addressed before a tariff could be certified were whether the Board

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should arbitrate disputes on allocation adjustments; dovetailing allocation adjustment dates and potential disputes on adjustments; interest; and retransmitters' compliance with the quantum agreement. The Board informed the Collectives that it would not arbitrate any dispute pertaining to the amount, timing or other issue concerning allocation adjustments. The tariff would provide the adjustments and set the dates by which they would be payable.

Pursuant to the allocation agreement of November 9, 2012, CBRA, CRC and FWS (the "Receiving collectives") are entitled to a greater share of royalties than in 2004-2008 while BBI, CCC, CRRA, DRCTV, MLB and SOCAN (the "Paying collectives") are entitled to less. The Collectives all agreed that the Receiving collectives are entitled to allocation adjustments from the Paying collectives for the relevant period and on how the money should flow among them. However, they did not agree on whether allocation adjustments should attract interest. The Receiving collectives asked for interest on allocation adjustments while the Paying collectives indicated that allocation adjustments should not be subject to interest.

The Receiving collectives argued that it was to be expected that the issue of interest on allocation adjustments would not be discussed before the allocation agreement was reached, explaining why the issue was not raised until November 14, 2012; the November 9, 2013 email asked for the hearing to be adjourned, not cancelled, which meant that some issues remained to be addressed; the wording of the 2012 draft tariff suggested that interest ought to be paid on allocation adjustments; and, their position was consistent with the Board's general policy on retroactive payments, as explained in the *SOCAN-Re:Sound CBC Radio Tariff, 2006-2011(CBC Radio (2011))*.

Referring again to *CBC Radio (2011)*, the Receiving collectives also proposed using the Bank of Canada's prime rate, a higher rate than the Bank Rate, as the rate should reflect actual opportunity costs, expressed as the interest rates that would be payable on loans to rights holders. The prime rate would be a compromise between the Bank Rate and the real opportunity costs.

The Paying collectives argued that the allocation agreement reflected a final resolution of all significant financial issues and that interest over a four-year period was not an ancillary matter; neither the quantum agreement nor the 2012 draft tariff provided for interest to be paid on allocation adjustments; no interest was ever paid on allocation adjustments in earlier retransmission proceedings; judicial and quasi-judicial bodies encourage settlements and additional terms that were not negotiated in settlements should not be imposed; silence is not tantamount to an implicit agreement that

the issue was to be adjudicated at a later date; the argument on the Board's general policy is not relevant as it concerns retroactive payments by users to collectives and not the inter-collective reallocation of royalties; neither the Paying collectives nor their members derived any benefit from collecting the royalties that are to be reallocated; and, the Receiving collectives provided no evidence of opportunity costs.

Alternatively, the Paying collectives proposed that any interest to be paid should be set according to a proper application of the doctrine of unjust enrichment, which dictates that any amount in lieu of interest should not exceed interest actually earned by the Paying collectives on funds that are to be reallocated. Only interest accrued since the date of the allocation agreement should be awarded.

The Receiving collectives challenged the Paying collectives' alternative. They argued that interest payable to them for being deprived of the use of that money should not depend on what the Paying collectives chose to do with the money and that accruing interest from the date of the allocation agreement would be inconsistent with past Board decisions, judicial decisions and the principles that underlie prejudgment interest.

In its analysis of the parties' arguments, the Board did not rely on the arguments with respect to the 2012 draft tariff, the fact that interest was not addressed during the discussions leading to the allocation agreement, or the fact that no interest was ever paid on allocation adjustments in earlier retransmission proceedings. These arguments were found to be either irrelevant to the issue at hand or not determinative.

The Board concluded that the principles outlined in *CBC Radio (2011)* dealing with the imposition of interest were relevant and that interest should be payable on allocation adjustments. As the Board explained: "[t]he principle is clear. A delay in collecting royalties entails opportunity costs for the collective or its members. So does a delay in receiving its full royalty allocation. In both cases, resulting losses must be compensated through the imposition of interest." Once the Board had decided that interest should be payable on allocation adjustments, it became relatively easy to dispose of the remaining arguments advanced by the parties. First, the fact that the Receiving collectives did not file better evidence of their opportunity costs was not determinative. Second, unjust enrichment was irrelevant. As a matter of policy, the Board imposes interest as part of terms and conditions of the tariff. Third, the argument that interest should not apply for the whole period was not tenable as the Receiving collectives' opportunity costs exist from January 1, 2009.

The Board disagreed with the Receiving collectives' proposal of using the Bank of Canada's published prime rate instead of the Bank Rate, for several reasons.

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First, the Receiving collectives failed to provide justification for abandoning the Board's past practice of using the Bank Rate. Second, little would have been served by imposing on the Paying collectives a costlier interest formula than that which had prevailed in the past. Third, it was impossible to decide in this instance whether, by whom or when the interest issue ought to have been raised. Using a higher interest rate than usual would have amounted to an inappropriate sanction.

Hence, the Board certified a television tariff that reflects the quantum agreement and the allocation agreement. The royalties payable by small retransmission systems and unscrambled Low Power Television Stations and Multichannel Multipoint Distribution Systems remained the same. For all other systems, rates were increased over the life of the tariff by 6¢ to 13¢ per subscriber per month. These increases are justified to reflect increase in both the number of distant signals available to subscribers and the Consumer Price Index.

The wording of the tariffs the Board certified is essentially identical, other than the television royalty amounts and allocations, to the wording of the ones they replace. Transitional provisions were simplified as none were needed for the radio tariff and all but three retransmitters had already made the required payments based on the new television rates. The Collectives had also already agreed on how to effect television royalty allocation adjustments for the period ending December 31, 2012 and retransmitters had already allocated television royalties since January 1, 2013 in accordance to the same allocation ratios certified by the Board.

The Board concluded that 60 days should be ample time for the Paying collectives to secure the necessary funds for the allocation adjustments and added ten days to the second and third deadlines to account for the year-end holidays. The Board also rejected the Paying collectives' proposal that interest on allocation not be due until later, in case of a possible application for judicial review.

December 19, 2013 – Retransmission of Distant Television and Radio Signals, in Canada, for the Years 2014 to 2018 [Interim Decision]

At the request of BBI, CBRA, CCC, CRC, CRRA, DRTVC, FWS, MLB, SOCAN and the Objectors (Bell Canada, Bragg Communications Inc., Rogers Communications Inc., Shaw Communications Inc., Cogeco Cable Inc., Videotron G.P., TELUS Communications Company, MTS Inc., and the Canadian Cable Systems Alliance), the Board extended, on an interim basis, the application of the *Television Retransmission Tariff, 2009-2013* and of the *Radio Retransmission Tariff, 2009-2013*, subject to a few minor changes. These tariffs will remain in force, unless modified, until the final tariffs are certified for the years 2014 to 2018.

SODRAC

April 26, 2013 – SODRAC Tariff 5 (Reproduction of Musical Works in Cinematographic Works for Private Use or for Theatrical Exhibition, 2009-2012) [Interim Decision]

[Note that the decision was issued on December 20, 2012, with reasons to follow. These reasons were issued on April 26, 2013 but summarized in the 2012-13 Annual Report.]

July 5, 2013 – SODRAC Tariff 5 (Reproduction of Musical Works in Cinematographic Works for Private Use or for Theatrical Exhibition, 2009-2012) [Redetermination]

On November 2, 2012, the Board rendered its reasons on Tariff 5 and certified *SODRAC Tariff No. 5 (Reproduction of Musical Works in Cinematographic Works for Private Use or for Theatrical Exhibition), 2009-2012.*

On December 3, 2012, the Canadian Association of Film Distributors and Exporters (CAFDE) requested the suspension of the 2009-2012 tariff, the continuation, on an interim basis, of the *SODRAC Tariff for the Reproduction of Musical Works in Video-copies, 2004-2008*, and the certification of a new tariff for 2009-2012.

On December 20, 2012, the Board suspended the application of the tariff for 2009-2012 and granted the application for an interim decision, with reasons to follow. The Board rendered its reasons on April 26, 2013, which can be summed up in two points: the November 2 decision contains an error that the Board has the power to correct and the 2009-2012 tariff is null and void since the decision was rendered in breach of procedural fairness. *[Note that a summary of the reasons of April 26, 2013 is available in the 2012-13 Annual Report, page 27.]*

On July 5, 2013, the Board issued its reasons on the redetermination of the records with the objective of certifying a new tariff. There was sufficient evidence on the record to allow the Board to make a decision without asking the parties to file additional evidence, submissions or arguments.

Tariff 5 concerns two types of copies of music: DVD copies for retail sale or rental, and theatrical copies for showing in a theatre. Theatrical copies were not in issue as they were not affected by the Board's misinterpretation of the CAFDE's proposal, explained below. Only the tariff for reproducing music on DVDs for private use needed to be redetermined.

Initially, SODRAC proposed a DVD rate of 1.2 per cent of distribution revenues subject to minimum fees of 8¢ per DVD sold to consumers and 32¢ per DVD rented to consumers. After examining CAFDE's statement of case, SODRAC revised its proposed rates to 1.92¢ for the first fifteen minutes, 1.18¢ for the next fifteen minutes, and 0.71¢ thereafter, to make distributors subject to the same rates as proposed for the sale of programs to consumers by the Canadian Broadcasting Corporation (CBC). For background music, the proposed rates were 0.78¢, 0.47¢, and 0.28¢, respectively.

On November 2, 2012, the Board certified rates of 1.44¢ for the first fifteen minutes, 0.87¢ for the next fifteen minutes, and 0.52¢ thereafter. For background music, the certified rates were 0.58¢, 0.35¢ and 0.21¢, respectively.

CAFDE's position was that producers had already cleared the required rights through to the viewer. In its November 2 decision, the Board stated that, alternatively, CAFDE was seeking a tariff that was structured like the CBC 2002 Agreement, i.e. based on a cents-per-minute, per-copy rate. Consequently, the Board certified a tariff with a cents-per-minute, per-copy rates: 0.65¢ for the first fifteen minutes, 1.25¢ for the next fifteen minutes, and 2¢ thereafter. Yet, CAFDE's proposal did not provide for a cents-per-minute, per-copy rate, but for a three-tiered cents-per-copy rate depending on the amount of music used. That was the palpable mistake made by the Board.

At that time, the Board opted for the rate structure used for CBC sales of DVDs to consumers since it has served SODRAC and CBC well, since it had thought the parties had agreed to use that structure, and since it allows royalties to vary with the extent to which distributors need access to the SODRAC repertoire. The CBC's rate schedule was the starting position for the purposes of the tariff redetermination. This approach is *prima facie* fair, subject to the Board's analysis of CAFDE's reservations.

CAFDE's reservations regarding the possible application of the CBC rate schedule to distributors can be summarized as follows. First, CAFDE proposed making no distinction between background and feature music on the grounds that it would be difficult to apply. However, the distinction seems not to have caused issues for CBC and the reporting requirements are such that the burden of identifying what is in repertoire essentially falls on SODRAC.

Second, CAFDE also proposed a cents-per-copy rate based on the amount of music used as it would be easier to apply and avoid the need to split hairs about duration. However, distribution contracts stipulate that the distributor is entitled to a copy of the musical cue sheet and SODRAC has to do most of the timing work under the reporting requirements.

Third, CAFDE claimed that distributors offer all movies on DVD, irrespective of their commercial success while, by contrast, CBC distributes only its most popular shows on DVD. For that reason, distributors' rates should necessarily be lower than CBC's to account for that difference in markets. However, CAFDE did not provide any evidence to support its claim. According to distributors, the more a DVD sells, the less likely it is to contain SODRAC music and the smaller are the royalties.

Despite CAFDE's claims, the Board remained satisfied that it is fair to import the CBC rate schedule into SODRAC Tariff 5, while agreeing to accommodate CAFDE on the non-distinction between background and feature music and the cents-per-copy rate. The best way to achieve this was to offer distributors the option, which they could exercise once a year, to be bound by either a tiered rate schedule with a single rate or the CBC rate schedule.

Based on the rates in the CBC schedule, the Board developed a tiered rate schedule containing a single rate which assumes that there is no distinction between background and feature music. To do this, the Board assumed that a DVD contains an average of three minutes of background music for one minute of feature music. The per-copy royalties equivalent to CBC schedule is as follows.

Minutes of music requiring a SODRAC licence contained in the audiovisual work	Per-Copy Royalty
No more than 5	2.39¢
More than 5 and no more than 10	6.36¢
More than 10 and no more than 20	11.85¢
More than 20 and no more than 30	16.97¢
More than 30 and no more than 45	21.43¢
More than 45 and no more than 60	25.74¢

The interval structure is intended to strike a balance between subtlety and simplicity. The rate schedule stops at 60 minutes because audiovisual works with high musical content are excluded from the definition of cinematographic work in Tariff 5.

Distributors who opt for the CBC rate schedule should not have to pay more than what SODRAC was requesting at the outset for the period covered by the tariff. Therefore, the total amount of royalties that distributors have to pay for the four-year period from 2009 to 2012 was capped to 1.2 per cent of distribution revenues.

The Board agreed with SODRAC that the tariff should extend to direct-to-video releases. The reporting requirements and transitional provisions remained essentially the same as those set out in the November 2 Decision, subject to the appropriate adjustments.

Note: This decision currently is the subject of an application for judicial review filed by CAFDE on August 6, 2013. (File: A-265-13)

Unlocatable Copyright Owners

Pursuant to section 77 of the *Act*, the Board may grant licenses authorizing the use of published works, fixed performances, published sound recordings and fixed communication signals, if the copyright owner is unlocatable. However, the *Act* requires the applicants to make reasonable efforts to find the copyright owner. Licenses granted by the Board are non-exclusive and valid only in Canada.

During the fiscal year 2013-14, 21 applications were filed with the Board and the following 9 licenses were issued:

- *Chenelière Éducation*, Montreal, Quebec, for the reproduction and communication to the public by telecommunication of a literary work;
- *Régiment de Maisonneuve*, Montreal, Quebec, for the reproduction, the republication and the communication to the public by telecommunication of a literary work;
- Wendy Mitchinson, Bright, Ontario, for the reproduction and communication to the public by telecommunication of three advertisement images;
- Rebecca Jenkins, Vancouver, British Columbia, for the reproduction and communication to the public by telecommunication of a film;
- *Bibliothèque et Archives nationales du Québec* (BAnQ), Montreal, Quebec, for the reproduction and communication to the public by telecommunication of monographs;
- *Musée de Charlevoix*, La Malbaie, Quebec, for the reproduction and display of a poster;
- *Bibliothèque et Archives nationales du Québec* (BAnQ), Montreal, Quebec, for the reproduction and communication to the public by telecommunication of periodicals and theater programs;
- *Les Éditions du Quartz*, Rouyn-Noranda, Quebec, for the reproduction, the republication and the distribution on paper of the text in a book;
- KV 265, Chicago, Illinois, U.S.A., for the use of a literary work in public performances.

Court Proceedings

Federal Court of Appeal

Two applications for judicial review were filed with the Federal Court of Appeal in 2013-14:

- *CAFDE v. SODRAC* (File: A-265-13), on August 6, 2013, in respect of SODRAC Tariff 5 for the reproduction of musical works in cinematographic works for private use or for theatrical exhibition, 2009-2012.
- *CCC et al. v. CBRA et al.* (File: A-435-13), on January 6, 2014, in respect of the Tariff for the retransmission of distant television and radio signals, in Canada, for the years 2009 to 2013. The application was discontinued on April 9, 2014.

Three applications for judicial review were decided by the Federal Court of Appeal in 2013-14:

April 3, 2013 – *Manitoba v. Canadian Copyright Licensing Agency (Access Copyright)*, 2013 FCA 91 (File: A-119-12), in respect of the Crown immunity preliminary issue decided by the Board in the Access Copyright Tariff respecting employees of provincial and territorial governments.

On March 31, 2004 and 2009, Access Copyright ("Access") filed proposed tariffs for the years 2005 to 2009 and 2010 to 2014, claiming royalties for the reproduction of works in its repertoire by employees of provincial and territorial governments (except Quebec).

The Objectors, namely the governments of Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Nunavut, Prince Edward Island and Saskatchewan challenged the legality of the proposed tariffs on the basis of Crown immunity. They argued that by virtue of section 17 of the *Interpretation Act*, they were immune from the *Copyright Act* (the "*Act*") and therefore were not subject to the proposed tariffs filed by Access. Conversely, Access argued that the doctrine was not engaged and that, even if engaged, the *Act* applied to the Crown by necessary implication, or that the Objectors had waived any immunity they may otherwise have enjoyed.

The parties jointly requested that the Board decide the matter by way of a preliminary hearing based on an agreed statement of facts. The Board agreed. The matter was heard on September 27, 2011.

On January 5, 2012 (reasons issued on March 15, 2012), the Board dismissed the immunity claim of the Objectors on the ground that the *Act* bound the Crown by necessary implication.

Some Objectors (five provinces) sought judicial review of the decision. The applicants submitted that the Board erred in law when it concluded that the *Act* bound them by necessary implication.

On April 3, 2013, the Court dismissed the application for judicial review.

In its decision, the Federal Court of Appeal began by noting that, as the application for judicial review concerned a question of law of general application in respect of the *Act*, the standard of review was correctness.

The Court also noted that the principles to be applied in determining whether the Crown is immune from a particular statute on the

basis of section 17 of the *Interpretation Act* are well established in case law. As such, the presumption that no enactment is binding on the Crown can be rebutted (1) where the wording of the text contains expressly binding words; (2) where a clear intention to bind is manifest from the very terms of the statute; and, (3) where the purpose of the statute would be wholly frustrated if the government were not bound or, in other words, if an absurdity were produced.

Once the Board had acknowledged that there was no section stating clearly that the *Act* was binding on the Crown, it had to consider, through a purposive and contextual statutory analysis, whether it could discern a clear parliamentary intention to bind the Crown. In the Court's view, the Board understood this and applied the proper approach when it undertook its task.

Part III of the *Act* is entitled "Infringement of Copyright and Moral Rights and Exceptions to Infringement"; it is where one finds a score or more of exceptions that quite explicitly relate or apply to the Crown. Aside from the high number of exceptions, many are very detailed. They are also subject to conditions which would be illogical in the absence of a clear intent to otherwise bind the Crown.

In the Court's view, the express language of the *Act* and the contextual analysis point to one logical and plausible conclusion as to the intent of Parliament: the Crown is bound.

Given the foregoing, the Court concluded that there was no need to consider whether granting immunity would result in a frustration of the *Act* as a whole or in an absurdity.

February 24, 2014 – *Re:Sound v. Fitness Industry Council of Canada and Goodlife Fitness Centres Inc.*, 2014 FCA 48 (File: A-353-12), in respect of Re:Sound Tariff 6.B (Use of recorded music to accompany physical activities, 2008-2012)

On July 6, 2012, the Board certified Re:Sound Tariff 6.B for the performance in public or the communication to the public by telecommunication of published sound recordings embodying musical works and performers' performances of such works to accompany fitness classes, skating, dance instruction and other physical activities.

After a review of the evidence, the Board decided to base the royalty on the average payments made to SOCAN by fitness centers in accordance with confidential agreements it obtained from SOCAN after the end of the hearing. For fitness centres, a flat fee for each venue was established. With respect to repertoire, the Board decided that Re:Sound was entitled to collect equitable remuneration only on behalf of performers and makers of sound recordings that granted an authorization to Re:Sound.

Re:Sound sought judicial review of the decision. It argued that the Board breached the duty of fairness in basing the decision on a ground not considered during the hearing and on evidence that Re:Sound had no opportunity to address. Re:Sound also argued that the Board erred in law in interpreting section 19 of the *Act* to mean that only the percentage of sound recordings for which the performers and makers authorized Re:Sound to collect royalties on their behalf could receive equitable remuneration. Finally, Re:Sound argued that the royalty set by the Board was too low.

Applicable Standard of Review:

Breach of the duty of procedural fairness

The Court concluded that the standard of review for allegations of procedural unfairness was correctness. The Court added as well that in making the determination about compliance with the duty of fairness, a degree of deference to a procedural choice was particularly important when the procedural model under review differed from the judicial model of the courts.

Interpretation of the Act

The Court concluded that the standard of review was reasonableness. Unlike the decision in *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35, the statutory interpretation in dispute was not within a shared jurisdiction between the Board and the courts. The Court confirmed that the Board had superior expertise and a primary jurisdiction over the collective enforcement of neighboring rights, including the interpretation of statutory provisions of this regime.

Breach of duty of fairness:

Re:Sound argued that since the Board failed to disclose copies of SOCAN's confidential agreements to the parties and to provide an opportunity to make submissions on them, it breached the duty of fairness. Re:Sound added that the Board had the obligation to inform the parties of the basis on which it was considering establishing the royalties.

Non-disclosure of the SOCAN agreements

There was no discussion at the oral hearing of the possibility to use SOCAN agreements as a proxy for setting the amount of royalties. There was however discussions about the appropriateness of using SOCAN Tariff 19 (Fitness activities and dance instruction) as a benchmark. The Board informed the parties of its request to SOCAN to obtain copies of agreements with fitness clubs. The Board did not provide copies of the SOCAN agreements to the parties and the parties did not ask the Board to disclose them. Re:Sound obtained a copy of one agreement between SOCAN and a user and included it as evidence with its written submissions filed with the Board.

The Court confirmed that the Board was not restricted to the evidence submitted by the parties and that it was authorized to obtain copies of confidential agreements between users and SOCAN. The Court concluded that fairness did not require the Board to disclose copies of these agreements. The Court added that the Board did not unfairly deprive Re:Sound of its right to know and to respond to information in the Board's possession. Instead, Re:Sound failed to ask the Board for the SOCAN agreements.

Lack of notice of the basis of the decision

With respect to the lack of notice of the basis of the Board's decision, the Court concluded that basing a decision on a ground that could not have been anticipated by the parties and for which the parties did not have an opportunity to make submissions was a breach of duty of

fairness. Even if SOCAN Tariff 19 was discussed at the oral hearing, the Board did not base its calculation on the amount of royalties paid in accordance with this tariff but on discounted amounts negotiated under agreements concluded with SOCAN. The Court concluded that fairness would have required the Board to notify the parties that it was considering establishing the royalty rate on the amounts paid under the SOCAN agreements. The Court decided that the matter be remitted to the Board for redetermination of the royalties payable for the use of sound recordings in fitness classes after it has disclosed to the parties any information that it had on the ground on which it based its decision and after giving an opportunity to the parties to address it.

Interpretation of Section 19 of the *Act*:

In interpreting Section 19 of the *Act* and concluding that Re:Sound was entitled to collect equitable remuneration only on behalf of performers and makers of sound recordings in respect of which an authorization was granted to it, the Board gave three reasons. First, the Board concluded that Re:Sound was only able to collect royalties for works in its repertoire since the *Act* does not provide for an extended licensing regime in the context of neighboring rights. Second, the Board concluded that the interpretation proposed by Re:Sound of section 19 was not compatible with subsection 67.1(4) of the *Act*. Third, the Board concluded that subsection 68(2)(*a*)(i) of the *Act* provided that a tariff only applies to performers and makers of sound recordings eligible for equitable remuneration under section 20 of the *Act*.

The Court concluded that the first reason supported the Board's decision. The Court added four reasons to support the reasonableness of the Board's conclusions on the interpretation of section 19 of the *Act*.

1. A collective society is defined in section 2 of the *Act* as a society, association or corporation acting on behalf of those who have authorized it for collective administration;
2. The conclusions of the Board in interpreting section 19 of the *Act* are consistent with earlier decisions from the Board;
3. Section 67 of the *Act* imposes a duty on a collective society to provide information about its repertoire. If all eligible recordings were in Re:Sound's repertoire, this provision would be unnecessary; and
4. The Court concluded that it would be anomalous for a collective society to collect royalties for all eligible recordings but to distribute such royalties only to rights owners in Re:Sound's repertoire and to those it was able to find.

In light of these reasons, the Court concluded that the Board's decision was reasonable.

Did the Board set a royalty too low for physical activities other than fitness classes?

The Court noted that no attention was given during the hearing at the Board to this aspect of the file and that the Board had to use the "best information available". Since the royalty was based on the confidential agreements

between users and SOCAN, the Court set aside this aspect of the Board's decision on the ground of breach of the duty of fairness. It was therefore not necessary to consider if the royalty set by the Board was too low.

March 31, 2014 – *CBC v. SODRAC and Astral v. SODRAC in respect of the SODRAC v. CBC and SODRAC v. Astral licences; CBC v. SODRAC in respect of an interim decision on a SODRAC v. CBC licence*, 2014 FCA 84 (Files: A-516-12, A-527-12 and A-63-13), in respect of licences issued by the Board

SOCRAC, a collective society which administers reproduction rights of its members, asked the Copyright Board to settle the terms of licences to be granted to the Canadian Broadcasting Corporation/Société Radio Canada (CBC) and to Astral Media Inc. (Astral). The Board consolidated the hearing of these two matters.

In a decision dated November 2, 2012 (the Decision), the Board settled the terms of the 2008-2012 licence to be granted to the two broadcasters. Under separate applications for judicial review, the CBC and Astral sought to set aside several terms of the licence issued to them pursuant to the Decision.The retroactive licences issued by the Board on November 2, 2012 expired on March 31, 2012 (CBC) and August 31, 2012 (Astral). In order to fill this legal vacuum, on January 16, 2013, the Board ordered that the licences for the 2008-2012 period would continue in effect from the date of their expiry until the Board rendered a final decision with respect to the application made by SODRAC for licences for the 2012-2016 period. The Board's interim decision and the licences issued as a result are the subject of the third application for judicial review by CBC.

Royalties Payable for Ephemeral Reproductions

The terms of the licence reflected the Board's view that royalties are payable with respect to ephemeral copies (copies or reproductions that exist only to facilitate a technological operation by which audiovisual work is created or broadcast) of works made by the broadcasters in the normal course of their production or broadcasting activities.

The Broadcasters argued that the use of copy-dependent technology does not add value to an enterprise and as a result, there is no additional value to share with artists who, incidentally, bear none of the costs of acquiring and maintaining the new technology. The Court held that this was an economic argument, on which the Board heard extensive evidence, and on which it came to a conclusion for which there is an evidentiary foundation. The Court therefore held that it was not in a position to interfere with the Board's conclusion on the economic justification for its conclusion.

The Broadcasters also argued that the Board's decision failed to give effect to the principle of technological neutrality articulated by the Supreme Court in *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 34. [*ESA*] While the Broadcasters conceded that the incorporation of a musical work into an audiovisual work (synchronization) is a reproduction that attracts royalties, they went on to argue that copies of the work that are made purely to meet the requirements of the technological systems used by producers and broadcasters ought not to attract royalties. Changes in technology should not automatically result in changes in royalties.

The Court disagreed, stating that it is difficult to know how one is to approach technological neutrality post-*ESA*. It held that the Supreme Court in *ESA* did not explicitly, or by necessary implication, overrule *Bishop v. Stevens*, ([1990] 2 S.C.R. 467). Therefore, the Board did not err in finding that incidental copies are protected by copyright.

The Board's Decisions on Economic Issues

The Broadcasters claimed that the Board failed to carry out or to properly carry out its role as economic regulator by wrongly deciding a number of questions that arose before it in the course of its decision. The Court noted that the questions raised by the Broadcasters turned on whether ephemeral copies have economic value and, if so, the proper quantification of that value in the setting of royalties.

The Court held that such questions are reviewable on the standard of reasonableness since they inevitably involve the weight to be given to the evidence heard by the Board and the conclusions to be drawn from that evidence. Reasonableness, in this context, means "within the range of acceptable outcomes that are defensible in terms of the facts and the law": *Dunsmuir v. New Brunswick*, 2008 SCC 9.

The Broadcasters' first approach to the question of the value of ephemeral copies was to argue that any value attached to ephemeral copies was compensated in the through-to-the-viewer licence issued to the producers who paid for a synchronization licence with respect to an audiovisual work. However, the Board had found that, in the relevant market, the province of Quebec, through-to-the-viewer licensing existed but was not the norm. The Court stated that it is not its role to review the evidence and to decide if it would come to the same conclusion. The Board's conclusion was based on the evidence, it was intelligible and it was within the range of acceptable outcomes, having regard to the facts and the law.

The Broadcasters also challenged the Board's conclusion that Quebec was the relevant market. But, the Court held that, in light of the fact that SODRAC represented the majority of reproduction rights holders in Quebec, it was not unreasonable to consider the market where SODRAC was the most active as the relevant market.

The Court also rejected the Broadcasters' arguments in relation to other economic issues, such as the fact that SODRAC's royalties were fixed as a percentage of royalties payable to SOCAN, and the fact that some royalties imposed by the Board were inconsistent with those ratios. The Court held that the Board's decisions were based upon the evidence that the Board had before it and to which it made reference in its Decision. Since the Board has expertise in the setting of appropriate royalties, had heard all the evidence and had an in-depth understanding of the context in which these questions arose, the Court should defer to the Board's expertise, unless it could be shown that the Board had come to an unreasonable conclusion. That has not been shown with respect to these issues.

Blanket Licence vs. Transaction-Based Licences

CBC argued that the Board exceeded its jurisdiction when it imposed a blanket synchronization licence. It said that while the Board could impose a blanket licence with its consent, it could not do so without it. CBC argued that while s. 70.2 of the *Act* permits the Board "to fix the royalties and their related terms and conditions," it does not include the power to decide if the parties will enter into a licensing agreement at all. If the parties do not agree that they wish to enter into a licence agreement, there is no agreement with respect to which the Board may fix the royalties and the terms and conditions.

The Court noted that, in its submissions before the Board, CBC seemed to have conceded that the Board could impose a blanket licence. However, before the FCA, CBC argued that while the Board could impose a blanket licence with its consent, it could not do so without it.

If that were so, the Court stated, the Board's remedial jurisdiction under s. 70.2 would be dependent upon the consent of one of the parties to the statutory arbitration. On its face, such a proposition is at odds with the objective of section 70.2, which is to resolve disputes that the parties have been unable to resolve themselves.

While CBC claimed that *CTV Television Network v. Canada (Copyright Board)*, ([1990] 3 F.C. 489) supports its position, the Court held that the decision is of no assistance to CBC, and that the statement from *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, ([1989] 1 S.C.R. 1722) that "the powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose" continued to be good law: *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4.

Discount Formula

The discount formula is designed to give the *Broadcasters* credit when they broadcast a program in which the producer has in fact obtained a through-to-the-viewer licence from SODRAC. In a given month, the royalty payable by a broadcaster is the net royalty rate less the total of the discounts for programs containing music from the SODRAC repertoire that have been cleared to the viewer.

Since royalties payable to SODRAC are only payable for the use of music in the SODRAC repertoire, if all the programs using music from the SODRAC repertoire in a given month were cleared to the viewer, then the formula should result in a discount equal to the total royalties otherwise payable for that month.

The Board's formula would have calculated the discount based on the ratio of a program's production cost, in the case of a CBC program, and the program's acquisition cost, in the case of another program, and the total production and acquisition costs for the programs broadcast by the service during the month. The Court found that this formula was incorrect. If the formula is properly constructed, in a month where all the music used from the SODRAC repertoire was cleared to the viewer, the discount should equal the net royalty rate so that, in that month, no royalties would be due.

Since music from the SODRAC repertoire is only 46.33 per cent of all music broadcast by CBC television, even if all programs broadcast in a given period were cleared to the viewer, the total discount for that month would be in the order of 46 per cent, such that a royalty of 54 per cent would be payable in a month in which all rights had already been cleared to the viewer. The Court held that this result was contrary to law, in the sense that royalties are not payable where the rights to use the music have already been cleared.

In order for the discount formula to work as intended, the ratio must consider only the production or acquisition cost of all music from the SODRAC repertoire that has been broadcast in the reference month. Where all of that music has been cleared to the viewer, the ratio will equal 1. For this reason, the Court allowed the applications in part to allow for the amendment of the discount formula.

CBC's Ability to Pay

Lastly, CBC argued that the Board committed a reviewable error in ordering a four-fold increase in royalties payable at a time when, according to the evidence, CBC's revenues have diminished drastically – thereby not taking account CBC's ability to pay the royalties. The Court dismissed the argument, stating that the Board's role as economic regulator does not extend to protecting CBC from the cost consequences of the programming choices it makes.

Copyright Board Licences

Following the decision of the Court, the Board posted on its website a copy of both SODRAC v. CBC and SODRAC v. Astral licences, as modified by the Federal Court of Appeal on March 31, 2014 (A-516-12 and A-527-12).

Section 5.03(2) of the CBC licence now states that:

If a television program contains at least one Work and the CBC provides or has provided SODRAC with documentation establishing that the rights referred to in paragraph 2.01(e) have been cleared with respect to all the Works embedded into the program, the CBC is entitled, with respect to that program, to a discount of

$$\frac{A \times B}{C}$$

where

(A) represents the rate applicable to the service that Broadcasts the relevant program,

(B) represents the program's production cost, in the case of a CBC Program, and the program's acquisition cost, in the case of another program, and

(C) represents the total production and acquisition costs for programs containing one or more Works Broadcast by the service during the month.

Section 5.02(2) of the Astral licence now states that :

If a television program contains at least one Work and provides or has provided SODRAC with documentation establishing that the rights referred to in paragraph 2.01(c) have been cleared with respect to all the Works embedded into the program, Astral is entitled, with respect to that program, to a discount of

$$\frac{A \times B}{C}$$

where

(A) represents the rate applicable to the service that Broadcasts the relevant program,

(B) represents the program's acquisition cost, and

(C) represents the total acquisition costs for the programs containing one or more Works Broadcast by the service during the month.

Quebec Superior Court

October 24, 2013 – *Bell Media v. SODRAC*, 2013 QCCS 5203, in respect of an application by SODRAC for a licence for Bell Media (formerly Astral)

Bell Media (Bell) and SODRAC unsuccessfully attempted to negotiate an agreement on the royalties that Bell would pay for the broadcasting programs that contained music from SODRAC's repertoire, for the period of September 2012 to August 2016. Bell claimed that it has the benefit of new exemptions in the *Act* that came into force in 2012 (such as backup copies and a temporary reproduction), but SODRAC did not agree.

Therefore, in February 2013, SODRAC asked the Board to certify a licence for the 2012-2016 period. In March, Bell asked the Board to suspend the proceedings until a decision is rendered by the Federal Court of Appeal in relation to the 2008-2012 period, as the judgment could affect the tariff request before it. A few days later, Bell filed a request for a

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declaratory judgment with the Superior Court. According to it, the new legislative provisions have the effect of not requiring any royalties to be paid to SODRAC for the 2012-2016 period.

The Court held that while it is possible to proceed by way of declaratory judgment, it is generally preferable to leave a specialized tribunal, such as the Board, to pronounce itself on an issue over which it has jurisdiction.

The court held that, in this case, the Superior Court is as well placed as the Board to interpret the *Act*. However, as SODRAC had already brought the issue before the Board on Feb. 4, 2013, before Bell Media filed its motion for declaratory judgment, the Court held that it was appropriate to let the process take its course before the Board, rather than to split the file into different instances.

Agreements Filed with the Board

Pursuant to the *Act*, collective societies and users of copyrights can agree on the royalties and related terms of licenses for the use of a society's repertoire. Filing an agreement with the Board pursuant to section 70.5 of the *Act* within 15 days of its conclusion shields the parties from prosecutions pursuant to section 45 of the *Competition Act*. The same provision grants the Commissioner of Competition appointed under the *Competition Act* access to those agreements. In turn, where the Commissioner considers that such an agreement is contrary to the public interest, he may request the Board to examine it. The Board then sets the royalties and the related terms and conditions of the license.

In 2013-14, 177 agreements were filed with the Board pursuant to section 70.5 of the *Act*.

Access Copyright filed 46 agreements granting educational institutions, language schools, non-profit associations, copy shops and others a license to photocopy works in its repertoire.

COPIBEC filed 101 agreements, concluded with various educational institutions, municipalities, non-profit associations and other users.

CMRRA filed 21 agreements. Five agreements were filed by CBRA. Three agreements were filed by the *Société de gestion de l'Association nationale des éditeurs de livres*. Finally, one agreement was filed by SODRAC.